

REMARKS

A final office action, which was mailed August 16, 2007, rejected all pending claims 1-31. The undersigned thanks Examiner Nguyen for the courtesies extended during the telephonic interview on October 30, 2007. During the Interview, the above claim amendments were discussed. No agreement was reached.

In this Amendment, Applicants amend claims 1 and 24 and add new claims 47-56. The amendments to claims 1 and 24 more clearly define the porous structure. Added claims 47-56 further define the porous structure. As such, claims 1-31 and 47-56 are pending. Support for the amendments can be found throughout the specification, for example, on page 5, lines 25-26; on page 6, lines 21-30; and in Figs. 4D and 7C. The amendments to independent claims 1 and 24 render the rejections moot and place the claims in condition for allowance over the prior art of record.

Applicants amend claims 1 and 24 to remove the added elements that allegedly caused the claims to fail to comply with the written description requirement. Although Applicants believe that there is adequate support in the specification for these elements (*see Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 19 U.S.P.Q.2d 1111 (Fed. Cir. 1991)), Applicants have removed these elements to advance prosecution. Accordingly, the rejection of claims 1-31 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement is now moot and should be withdrawn.

Independent claims 1 and 24 have also been amended to recite "the porous structure defined by an plurality of hollow post-shaped elements, the hollow post-shaped elements separated by a void region therebetween and each hollow post-shaped element defining an internal volume adapted to contain a therapeutic agent." This amendment more clearly defines the porous structure as being defined by a plurality of the hollow post-shaped elements separated by a void region therebetween and each hollow post-shaped element defining an internal volume. This amendment is made in an attempt to define the structure, which can be seen in Figs. 4D and 7C of the instant application. As discussed in the specification, the porous structure has a morphology characterized by hollow post-shaped elements. See specification, page 5, lines 25-

26. The claims exclude the structures shown in U.S. Pat. No. 5,843,172 ("Yan") and U.S. Pat. No. 5,873,904 ("Ragheb"), which are merely macro structures that can be porous. In this application, the hollow post-shaped elements define the pores.

More specifically, Yan does not disclose a porous structure defined by a plurality of hollow post-shaped elements. Elements 76 of Yan are macrostructures which form the bands of a stent. They do not define a porous structure. Instead, elements 76 of Yan are themselves porous. Accordingly, claims 1 and 24 are not anticipated by Yan.

With regard to Ragheb, element 26 is not a hollow element "defining an internal volume." Instead, element 26 is a connector or one of a plurality of projections of the base material for securing a single porous layer 20 to the base material. Accordingly, claims 1 and 24 are not anticipated by Ragheb.

Accordingly, claims 1-31 and 47-56 define patentable subject matter over the cited prior art. Furthermore, each of the pending claims is believed to be in condition for allowance. As such, Applicants request that the Examiner allow all pending claims 1-31 and 47-56.

Although Applicants have amended certain claims to advance prosecution, Applicants believe that, before amendment, the claims contained patentable subject matter. As such, Applicants reserve the right to pursue claims of the same or similar scope in the future.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue, or comment does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

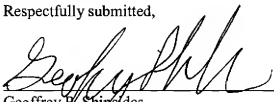
Applicant : Barry O'Brien et al.
Serial No. : 10/664,679
Filed : September 16, 2003
Page : 9 of 9

Attorney's Docket No.: 10527-462001 / 02-253

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 10/31/2007



Geoffrey V. Shippides
Reg. No. 55,617

Fish & Richardson P.C.
60 South Sixth Street
Suite 3300
Minneapolis, MN 55402
Telephone: (612) 335-5070
Facsimile: (612) 288-9696

60447786.doc